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09/579,393	05/26/2000	Thomas M. Krikorian	27592-01055-US2	7066
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HALIM, SAHERA				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/579,393

Applicant(s)

KRIKORIAN ET AL.

Examiner

SAHERA HALIM

Art Unit

2157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-26 and 28-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-26 and 28-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action responsive to RCE filed on August 20, 2008.
2. Claims 1-3, 5-26, 28-57 are pending.
3. Claims 4 and 27 have been cancelled.
4. Claims 53-57 have been added.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 1 recites the limitation "that is" in line 4. There is insufficient antecedent basis for this limitation in the claim. It is unclear whether the playback control device or a playback location is connected to the communications system. For examination purposes, it is read as "the at least one playback control device".
7. Claim 1 recites the limitation "that" in line 5. There is insufficient antecedent basis for this limitation in the claim. For examination purposes, it is read as "the playback control device".
8. Claim 1 recites the limitation "a user interface that is" in line 14. There is insufficient antecedent basis for this limitation in the claim. For examination purposes, it is read as "a user interface allowing".
9. Claims 2,-3, 5-23, 47-48, 51-54 recites the limitation "The continuous play broadcast system of". There is insufficient antecedent basis for this limitation in the claim. For examination purposes, it is read as "The continuous media playback system of".

10. Claim 24 recites the limitation "a web browser that are remoter form said web site and that are remotely located from the said playback location" in line 5. There is insufficient antecedent basis for this limitation in the claim. For examination purposes, it is read as "a web browser remote from said web site and is remotely located from said playback location".

11. Claim 57 recites the limitation "at least one playback control device that is located at a playback location, that is" in line 3. There is insufficient antecedent basis for this limitation in the claim. For examination purposes, it is read as "at least one playback control device located at a playback location, the playback device is".

12. Claim 57 recites the limitation "a user interface that allows" in line 12. There is insufficient antecedent basis for this limitation in the claim. For examination purposes, it is read as "a user interface allowing".

13. Claim 6 recites the limitation "that randomly" in line 4. There is insufficient antecedent basis for this limitation in the claim. For examination purposes, it is read as "randomly".

14. Claim 16 recites the limitation "that is" in line 2. There is insufficient antecedent basis for this limitation in the claim. For examination purposes, it is read as "media file currently".

15. Claim 29 recites the limitation "that randomly" in line 4. There is insufficient antecedent basis for this limitation in the claim. For examination purposes, it is read as "randomly".

16. Claim 33 recites the limitation "schedule that forms" in line 2. There is insufficient antecedent basis for this limitation in the claim. For examination purposes, it is read as "schedule forming".

17. Claim 39 recites the limitation "audio file that" in line 4. There is insufficient antecedent basis for this limitation in the claim. For examination purposes, it is read as "audio file allowing".

18. Claim 1 recites the limitation "wherein a computer" in line 10. There is insufficient antecedent basis for this limitation in the claim.

19. Claim 1 recites the limitation "wherein a web server" in line 12. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5, 14, 15, 18, 21, 24, 28, 36-38, 4, 44-50, and 54 – 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mott et al. US Patent No. 6,170,060 (hereinafter Mott) in view of Martin et al., US. Pat. No. 6,970,834 (hereinafter Martin).

21. As per claims 1 and 24, Mott teaches the continuous play broadcast system and method comprising a continuous play broadcast system comprising:

at least one playback control device [212] that is located at a playback location [mobile device 212] that is connected to a distributed communications system [distribution network 240; column 4, lines 32-61] and that includes an output device, memory to store digital media files and a continuous play program, and a controller to output said digital media files to said audio output device according to said continuous play program, wherein said media files include at least one of audio, video and announcements (column 5, lines 15-30; column 9, lines 56-67; column 10, lines 1-10; column 5, lines 40-67);

wherein a computer [client computer system 214] is remotely located from said playback location and communicates with said distributed communication system [removably coupled; column 5, lines 18-24]; and accessing a web site via said distribute communications system using a computer and a web browser [browser software 219] (column 9, lines 8-55); and

a web server [library server 280] is located remotely from said computer and is connected to said distributed communications system and to a master library of said digital media files [library site 250], wherein said computer includes a user interface [column 9, lines 8-56; column 3, lines 30-45] that allows a playback manager to access said web server via said distributed communications system and via said website to modify said continuous play program for said playback control device (column 5, lines 4-67; column 8, lines 1-61); and

wherein said computer is provided with one or more executable files form said web server to allow said playback manager and permitting a user to access one or more

digital media files using said user interface to audition the one or more media files without affecting said continuous play program [col. 8, line 1 – 65].

Although the system disclosed by Mott teaches substantial features of the claimed invention, it fails to teach selecting from the group consisting of audio, video and announcements. However, Martin teaches selecting from the group consisting of audio, video and announcements. It would have been obvious for a person having ordinary skill in the art at the time of the invention to combine the teachings of Mott and Martin in order to increase system flexibility.

22. As per claims 2 and 25, Mott teaches the continuous play broadcast system and method of claims 1 and 24 wherein said computer includes a browser module for accessing said web server and wherein said web server transmits executable files to said computer for creating said continuous play program (client browser software; column 9, lines 9-56).

23. As per claim 14 and 37, Mott teaches the continuous play broadcast system and method of claims 2 and 25 wherein said executable files allow said computer to access continuous play programs for a plurality of said playback control devices (group the playback control devices; column 8, line 22; column 12, lines 34-67).

24. As per claims 15 and 38, Mott teaches the continuous play broadcast system and method of claims 14 and 24 wherein said executable files allow said computer to group

at least two of said playback control devices and to create a common continuous play program for said at least two of said playback control devices (information playback parameters, group the playback control devices; column 8, lines 1- 56; column 12, lines 34-67).

25. As per claims 18 and 41, Mott teaches the continuous play broadcast system and method of claims 1 and 24 wherein said web server stores a profile for said playback control device (client information 272; column 8, lines 16-30)

26. As per claims 21 and 44 Mott teaches the continuous play broadcast system and method of claims 2 and 24 wherein said master library further contains at least one of digital announcement files, video files, and text/graphics files (column 5, lines 40-67; column 6, lines 36-67).

27. As per claim 36, Mott teaches the continuous play broadcast method of claim 24 wherein said executable files allow said computer to select and arrange custom collections by allowing at least one of selecting a plurality of said digital media files from said master library and by sequencing said digital media files and randomly playing said digital media files (Mott; information playback parameters, group the playback control devices; column 8, lines 1- 56; column 12, lines 34-67).

28. As per claims 47 and 49, Mott teaches the continuous play broadcast system of claims 1 and 24 wherein the computer alters the play programs for a plurality of playback control devices (group the playback control devices; column 8, line 22; column 12, lines 34-67).

29. As per claims 48 and 50, Mott teaches the continuous play broadcast system of claim 1 wherein said computer groups at least two of said playback control devices and creates a common continuous play program for said at least two of said playback control devices (group the playback control devices; column 8, line 22; column 12, lines 34-67).

30. As per claims 5 and 28, Mott teaches the continuous play broadcast system and method of claims 2 and 24. Mott does not teach wherein said executable files allow said computer to select and arrange custom playlists by selecting a plurality of said digital media files from said master library and by allowing at least one of sequencing said digital media files and randomly playing said digital media files.

Martin teaches wherein said executable files allow said computer to select and arrange custom playlists by selecting a plurality of said digital media files from said master library and by allowing at least one of sequencing said digital media files and randomly playing said digital media files (Fig. 5 and col. 7, line 29 – col. 8, line 23).

It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the random selection of Martin with the files of Mott. A person

of ordinary skill in the art would have been motivated to do this because the customization and selecting are a form of information playback parameters taught by Mott (column 8, lines 52-56).

31. Claim 57 has similar limitations as to claims 1 and 24; therefore, they are rejected under the same rational.

32. As per claims 53 and 55, Mott does not teach wherein said executable files permit said computer to control playback volume for said continuous play program. However, Martin teaches controlling playback volume for said continuous program (col. 5, line 28 - col. 6, line 67).

See motivation for claim 1.

33. As per claims 54 and 56, Mott does not teach wherein said controlling playback volume comprises controlling playback volume as a function of at least one parameter selected from the group consisting of: time, type of location, and area within a type of location. However, Martin teaches said controlling playback volume comprises controlling playback volume as a function of at least one parameter selected from the group consisting of: time, type of location, and area within a type of location (col. 5, line 28 - col. 6, line 67)

See motivation for claims 1 and 24.

34. Claims 6-13, 16, 17, 19, 20, 22, 23, 27-35, 39, 40, 42, 43 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mott in view of Martin and further in view of Krikorian US Patent No. 5,726,909. Krikorian teaches the invention as claimed including a continuous play of background music system (see abstract).

35. As per claims 6 and 29, Mott teaches the continuous play broadcast system of claims 2 and 25. Mott does not teach wherein said executable files allow said computer to select a plurality of predetermined collections of said digital media files, to allocate percentages of time for playing said collections and to create a composite collection that randomly selects said digital media files from said collections based on said allocated percentages. Krikorian teaches wherein said executable files allow said computer to select a plurality of predetermined collections of said digital media files, to allocate percentages of time for playing said collections and to create a composite collection that randomly selects said digital media files from said collections based on said allocated percentages (column5, lines 33-43).

It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the random selection of Martin with the files of Mott. A person of ordinary skill in the art would have been motivated to do this because the customization is a form of information playback parameters taught by Mott (column 8, lines 52-56).

36. As per claims 7 and 30, Mott teaches the continuous play broadcast system of claims 6 and 29. Mott does not teach wherein said executable files allow said computer to select at least one of said digital media files within said predetermined collections and to adjust the frequency at which said at least one of said digital media files is played in said composite collection. Krikorian teaches wherein said executable files allow said computer to select at least one of said digital media files within said predetermined collections and to adjust the frequency at which said at least one of said digital media files is played in said composite collection (column 5, lines 44-50).

See motivation for claim 6.

37. As per claims 8 and 31, Mott teaches the continuous play broadcast system and method of claims 6 and 29. Mott does not teach wherein said executable files allow said computer to select at least one of said digital media files within said predetermined collections and to prevent said at least one of said digital media files from playing in said composite collection. Krikorian teaches wherein said executable files allow said computer to select at least one of said digital media files within said predetermined collections and to prevent said at least one of said digital media files from playing in said composite collection (column 5, lines 51-67).

It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the customization of Krikorian with the files of Mott. A person of ordinary skill in the art would have been motivated to do this because the

customization is a form of information playback parameters taught by Mott (column 8, lines 52-56).

See motivation for claim 6.

38. As per claims 9 and 32, Mott teaches the continuous play broadcast system and method of claims 6 and 29. Mott does not teach wherein said executable files allow said computer to select at least one of said digital media files within said predetermined collections and to prevent said at least one of said digital media files from playing during preselected times in said composite collection. Krikorian teaches wherein said executable files allow said computer to select at least one of said digital media files within said predetermined collections and to prevent said at least one of said digital media files from playing during preselected times in said composite collection (column 5, line 51-67).

See motivation for claim 6.

39. As per claims 10 and 33, Mott teaches the continuous play broadcast system and method of claims 6 and 29. Mott does not teach wherein said executable files allow said computer to assign said predetermined collections to a time-based schedule that forms part of said continuous play program. Krikorian teaches wherein said executable files allow said computer to assign said predetermined collections to a time-based schedule that forms part of said continuous play program (column 6, lines 36-64).

See motivation for claim 6.

40. As per claims 11 and 34, Mott teaches the continuous play broadcast system and method of claims 10 and 33. Mott does not teach wherein said executable files allow said computer to assign said composite collection to said time-based schedule. Krikorian teaches wherein said executable files allow said computer to assign said composite collection to said time-based schedule (column 6, lines 36-64).

See motivation for claim 6.

41. As per claims 12 and 35, Mott teaches the continuous play broadcast system and method of claims 10 and 33. Mott does not teach wherein a smallest time unit provided in said time-based schedule can be varied. Krikorian teaches wherein a smallest time unit provided in said time-based schedule can be varied (column 6, lines 36-64).

See motivation for claim 6.

42. As per claims 13 and 36, Mott and Krikorian teach the continuous play broadcast system and method of claims 12 and 24 wherein said executable files allow said computer to select and arrange custom collections by allowing at least one of selecting a plurality of said digital media files from said master library and by sequencing said digital media files and randomly playing said digital media files (Mott; information playback parameters, group the playback control devices; column 8, lines 1- 56; column 12, lines 34-67).

See motivation for claim 6.

43. As per claims 16 and 39, Mott teaches the continuous play broadcast system and method of claims 2 and 25. Mott does not teach wherein said executable files allow said computer to display a digital media file that is currently being played by said playback control device and at least one digital media file that follows said digital media file that is currently being played. Krikorian teaches wherein said executable files allow said computer to display a digital media file that is currently being played by said playback control device and at least one digital media file that follows said digital media file that is currently being played (column 5, lines 51-67).

See motivation for claim 6.

44. As per claims 17 and 40, Mott teaches the continuous play broadcast system and method of claims 16 and 24. Mott does not teach wherein said web server delivers at least one digital media file to said computer as a streaming media file for output to said output device connected to said computer. Krikorian teaches wherein said web server delivers at least one digital media file to said computer as a streaming media file for output to said output device connected to said computer (column 4, lines 27-40).

See motivation for claim 6.

45. As per claims 19 and 42, Mott teaches the continuous play broadcast system and Method of claims 2 and 25. Mott does not teach wherein said executable files allow said computer to select business hours to operate said playback control device. Krikorian teaches wherein said executable files allow said computer to select business

hours to operate said playback control device (column 6, lines 65-67; column 7, lines 1-6).

See motivation for claim 6.

46. As per claim 22 and 45, Mott teaches the continuous play broadcast system and method of claims 21 and 25. Mott does not teach wherein said executable files allow said computer to schedule at least one of said digital announcement files in said continuous play broadcast of said playback control device. Krikorian teaches wherein said executable files allow said computer to schedule at least one of said digital announcement files in said continuous play broadcast of said playback control device (column 6, lines 16-67; Figure 4).

See motivation for claim 6.

47. As per claims 23 and 46, Mott teaches the continuous play broadcast system and method of claims 22 and 25. Mott does not teach wherein said executable files allow said computer to schedule at least one of said digital announcement files and said video files in said continuous play broadcast of said playback control device on a recurring basis. Krikorian teaches wherein said executable files allow said computer to schedule at least one of said digital announcement files and said video files in said continuous play broadcast of said playback control device on a recurring basis (column 6, lines 58-64).

See motivation for claim 6.

48. Claims 3 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mott in view Martine and further in view of Leeke et al. US Patent No. 6,587,127. Leeke teaches the invention substantially as claimed including a content player with user profile.

Mott teaches the continuous play broadcast system and method of claims 2 and 25. Mott does not teach wherein said executable files are at least one of Active-x components, Java Applets and Java Script. Leeke teaches Java Applet files. See column 4, lines 50-67. It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the Java Applets of Leeke with the executable files of Mott. A person of ordinary skill in the art would have been motivated to do this to accommodate a variety of browsers.

It is noted that any citation to specific, pages, columns, lines, or figures in the prior art references and any interpretation of the references should not be considered to be limiting in any way. A reference is relevant for all it contains and may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art. In re Heck, 699 F.2d 1331, 1332-33, 216 USPQ 1038, 1039 (Fed. Cir. 1983) (quoting In re Lemelson, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968))

Conclusion

49. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 6,823,225 to Sass (Sasses teaches distributing and playing audio information).

US. Pat. No. 7,272,780 to Abbott et al. (indexing method for allowing a viewer to control the mode of delivery of program material).

US Pat. No. 6,526,411 to Ward (creating dynamic playlist).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SAHERA HALIM whose telephone number is (571)272-4003. The examiner can normally be reached on M-F from 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Sahera Halim
Patent Examiner

AU: 2451

Application/Control Number: 09/579,393
Art Unit: 2157

Page 18

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